

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 27 OCTOBER 2005

Case number: 2004/270

Notification of: EUROPEAN CENTRAL BANK

Legal basis: Article 27-5 of the regulation CE n° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

Name and address of the controller

1) Head of Recruitment and Staff Development Division
European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main

2) Deputy Director General of Human Resources, Budget and Organisation
European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main

3) Head of Institutional Law Division (due to an internal reorganisation as of 1 January 2006 the relevant Controller in the DG-Legal Services will be the Head of the Legal Affairs Division)
European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main

4) Director General Secretariat and Language Services
European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main

Organisational parts of the institution or body entrusted with the processing of personal data

- 1) Directorate General Human Resources, Budget and Organisation - Recruitment and Staff Development Division
- 2) Directorate General Human Resources, Budget and Organisation

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

- 3) Directorate General Legal Services – Institutional Law Division (as of 1 January 2006 the relevant Controller in the DG-Legal Services will be the Head of the Legal Affairs Division)
- 4) Directorate General Secretariat and Language Services

Name of the processing

Disciplinary cases (including related administrative reviews of complaints and grievances, Ombudsman and Court cases).

Purpose or purposes of the processing

In order to implement the relevant legal provisions as they are laid down in the ECB Conditions of Employment and the ECB Staff Rules, the Controllers have to perform the necessary processing operations at the ECB, related to disciplinary cases, following their responsibilities:

Analytically and for each of the controllers:

1) Head of Recruitment and Staff Development Division:

- a) Performing processing operations necessary to handle disciplinary cases, by exercising his/her duties.

These processing operations are undertaken upon the personal files of the staff members concerned, where the original documents related to the above mentioned purpose are stored.

2) Deputy Director General of Human Resources, Budget and Organisation:

- a) Performing processing operations necessary to handle disciplinary cases, by exercising his/her duties.

These processing operations are undertaken upon separate confidential electronic and hardcopy “working files” where copies of documents related to the above mentioned purpose are stored.

3) Head of Institutional Law Division:

- a) Processing operations necessary to provide the Directorate General Human Resources, Budget and Organisation as well as the Executive Board with consistent legal advice for their decisions in disciplinary cases, and
- b) Providing the ECB with legal advice as well as legal representation in Court cases and Ombudsman cases by fulfilling his/her responsibilities.

These processing operations are undertaken:

- i) in the confidential “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases”, and:

- ii) upon confidential electronic and hardcopy “working files”, where “print outs” of the Logbook and copies of documents related to the above mentioned purpose are stored.

4) Director General Secretariat and Language Services

Storing in hardcopy format final decisions on disciplinary cases, addressed by the Executive Board.

Description of the category or categories of data subjects

All staff members with permanent or fixed term contracts are subject to the “Conditions of Employment for staff at the ECB” and the “ECB Staff Rules”; all staff members with a short-term contract are subject to the “Conditions of Short-term Employment” and the “Rules for Short-term Employment”. Therefore all members of staff are potential data subjects for the relevant data processing operations.

Description of the data or categories of data (including, if applicable, special categories of data (Article 10) and/or origin of data).

Basic personal data of staff members and data related to disciplinary cases (including related administrative reviews of complaints and grievances, Court cases and Ombudsman cases). Those data could be divided in the following three categories:

- 1) Data necessary for the preparation of decisions concerning *disciplinary measures*, as they are described in Part 8 of the Conditions of Employment for Staff of the ECB, especially in Art. 43 and 44, or in Part VIII of the Conditions of Short-Term Employment, especially in Art. 34 and 35.
- 2) Data necessary for the preparation of *administrative reviews of complaints and grievances* as they are described in Part 8 of the Conditions of Employment for Staff of the ECB especially in Art. 41, in Part VIII of the ECB Conditions of Short-Term Employment especially in Art. 32, in Part 8 of the ECB Staff Rules and in Part 7 of the ECB-Rules for Short-term employment.
- 3) Data related to *Court cases and Ombudsman cases*.

Information to be given to data subjects

Staff members are informed about the provisions laid down in the Conditions of Employment for staff of the ECB and the ECB Staff Rules or Conditions of Short-term Employment and the Rules for Short-term Employment, which describe the rules and procedures concerning disciplinary cases, administrative reviews of complaints and grievances, when they start working at the ECB in specifically organized “induction seminars”. The relevant documents are also published on the ECB’s intranet site. Staff members can contact the respective Controller for any additional information falling under the scope of Art. 11 and 12 of the Regulation.

Procedures to grant rights of data subjects

a) As to the right of access (Art. 13):

- 1) Once the original documents referring to disciplinary cases are incorporated in the personal file, kept by the Head of Recruitment and Staff Development Division, the general rules set out in Article 7 Conditions of Employment / Article 12 Conditions for Short-term Employment and Article 1.3 ECB Staff Rules / Article 1.3 Rules for Short-term Employment apply. According to these articles each member of staff has the right at any time, even after leaving the ECB, to access his/her personal file and consequently to the information related to disciplinary cases.
- 2) For accessing the data in the separate electronic and hardcopy “working files”, kept by the Deputy Director General Human Resources, Budget and Organisation, where copies of the documents relevant to disciplinary cases are stored, the data subject shall contact the Controller.
- 3) For accessing the data contained in the “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases”, operated by Head of Institutional Law Division, the data subject shall contact the Controller.
- 4) For accessing the data in the electronic and hardcopy “working files”, kept by Head of Institutional Law Division, where copies of documents relevant to disciplinary cases and print outs of the “Logbook” are stored, the data subject shall contact the Controller.
- 5) For accessing the data in the hardcopy files, kept by the Director General Secretariat and Language Services, where copies of documents with the final Executive Board decisions relevant to disciplinary cases are stored, the data subject shall contact the Controller.

b) As to the exercise of all other rights laid down in Section 5 of the Regulation, the data subject shall contact the respective Controller.

As concerns disciplinary measures and according to Art. 43 (ii) of the Conditions of Employment of the ECB and Art. 34 (b) of the ECB Conditions of Short-Term Employment:

“Disciplinary measures must be in proportion to the gravity of the breach of discipline and the grounds on which they are based must be stated. They shall be adopted in accordance with the procedure laid down in the Staff Rules. The said procedure shall ensure that no member of staff may be subjected to a disciplinary measure without an opportunity to reply to the relevant charges first being granted”.

The ECB may restrict temporarily one or several rights laid down in Section 5 of Regulation EC No 45/2001, by applying Art. 20 of the Regulation, where such restriction constitutes a necessary measure to safeguard one or more of the provisions described in Art. 20.

Automated / manual processing operation

Personal data related to disciplinary cases undergo both automated and manual processing operations depending on the category they belong to:

(a) Manual Processing operations take place:

- 1) Upon the personal file of staff members, kept by Head of Recruitment and Staff Development Division, where the documents related to disciplinary cases are filed as original.

According to the ECB Staff Rules, there shall be only one personal file for each member of staff. The details regarding the handling of personal files of staff members can be found in Article 1.3 of the ECB Staff Rules / Article 1.3 of the Rules for Short-term Employment.

2) Upon the separate hardcopy “working files”, kept by the Deputy Director General Human Resources, Budget and Organisation, where copies of the documents related to disciplinary cases are filed.

3) Upon the separate hardcopy “working files”, kept by Head of Institutional Law Division, where copies of documents relevant to disciplinary cases, as well as print outs of the “Logbook” are stored.

4) Upon the hardcopy files, kept by the Director General Secretariat and Language Services, where copies of documents with final Executive Board decisions relevant to disciplinary cases are stored.

(b) Automated processing operations take place:

1) In the “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases”, operated by the Head of Institutional Law Division.

2) Upon the separate electronic “working files”, kept by the Deputy Director General Human Resources, Budget and Organisation, where copies of the documents related to disciplinary cases are stored.

3) Upon the electronic “working files”, kept by Head of Institutional Law Division, where copies of documents relevant to disciplinary cases, as well as print outs of the “Logbook” are stored.

Legal basis of the processing operation

Conditions of Employment for Staff of the ECB (Part 2, Art. 9(c) and Part 8) / Conditions of Short-term Employment (Part VIII) and ECB Staff Rules (Part 8) / Rules for Short-term Employment (Part 7).

The recipients or categories of recipient to whom the data might be disclosed

1) As concerns the part of data contained in the personal file according to the Staff rules/Rules for Short-term Employment the only recipients of the documents in the personal file can be:

a) Members of the Executive Board;

b) Members of staff who, for professional reasons, need to have access to the information contained in the file and whose access is authorised by the Director General Human Resources, Budget and Organisation or his/her Deputy Director General. These parties will be subject to the legal obligation of professional secrecy;

c) A member of staff may authorise the Directorate General Human Resources, Budget and Organisation - subject to the approval of the Executive Board - to make his/her personal file available to third parties.

d) The Courts or the European Ombudsman.

Furthermore, recipients of the documents in the personal file can be the Head of Institutional Law Division at the ECB, or his/her members of staff who need to have such access for professional reasons in order to operate the “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases”. These members of staff will be subject to the legal obligation of professional secrecy.

2) The same (as described above under point 1) applies to the separate “working files”, kept centrally by Deputy Director General Human Resources, Budget and Organisation, where copies of the documents related to disciplinary cases are filed.

3) As concerns data contained in the “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases” the only recipients may be the Directorate General of Human Resources, Budget and Organisation, and members of staff who, for professional reasons, need to have access to the information contained in the file and whose access is authorised by the Head of Institutional Law Division. These members of staff will be subject to the legal obligation of professional secrecy.

4) The same (as described above under point 1) applies to the “working files”, kept by Head of Institutional Law Division, where copies of documents relevant to disciplinary cases and print outs of the “Logbook” are stored.

5) As concerns the files, kept by the Director General Secretariat and Language Services, where copies of documents with final Executive Board decisions relevant to disciplinary cases are stored, the only recipients of the documents in the personal file can be:

a) Members of the Executive Board;

b) Members of staff who, for professional reasons, need to have access to the information contained in the file and whose access is authorised by the Director General Secretariat and Language Services. These parties will be subject to the legal obligation of professional secrecy.

General indication of the time limits

for blocking:

There is no special period foreseen for blocking the data.

and/or

for erasing:

of the different categories of data *(Please, specify the time limits for every category, if applicable)*

1) As concerns data contained in the personal files, kept by the Head of Recruitment and Staff Development Division, files shall be destroyed 10 years after staff members have left the ECB if there are no pending claims or any other still open issues concerning their ECB employment relationship. The personal file of pensioners will be destroyed 10 years after the end of the year

in which the last ECB pension payment was made to either the pensioner or one of his entitled dependants, respectively, provided that there are no pending claims or other still open issues.

- 2) As concerns data contained in the separate electronic and hardcopy “working files”, kept by Deputy Director General Human Resources, Budget and Organisation, where copies of the documents related to disciplinary cases are stored, the same rules as described above under (1) will apply.
- 3) As concerns data contained in the data contained in the “Logbook for Administrative Reviews of Complaints and Grievances, Disciplinary procedures, Ombudsman cases, Court cases” operated by Head of Institutional Law Division, the same rules as described above under (1) will apply.
- 4) As concerns data contained in the separate electronic and hardcopy “working files”, kept by Head of Institutional Law Division, where copies of documents relevant to disciplinary cases and print outs of the “Logbook” are stored, the same rules as described above (under (1) will apply.
- 5) As concerns data contained in the files, kept by the Director General Secretariat and Language Services, where copies of documents with final Executive Board decisions relevant to disciplinary cases are stored, the same rules as described above under (1) will apply.

Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

There are no specific rules or procedures in place concerning longer storage periods for historical, statistical or scientific purposes.

Proposed transfers of data to third countries or international organisations

There are no proposed transfers of data to third countries or international organisations.

The processing operation presents specific risk which justifies prior checking (*Please describe*):

as foreseen in:

X Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

X Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

↑ Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

↑ Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

↑ Other (general concept in Article 27.1)

Comments:

- a) It is to be noted that administrative reviews of complaints and grievances, Ombudsman cases and Court cases, are insofar also covered by this notification, as they are related to disciplinary cases.
- b) Following consultation with the ECB's DPO the Controllers responsible for the "working files" in DG-H and DG-L have currently started the process of creating only one shared "working file" related to disciplinary cases (with classified access rights).

Place and date: Frankfurt am Main, 26 October 2005

Data Protection Officer: Wolfgang Sommerfeld *[signed]*

Institution or body: European Central Bank